

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACK PRESTON COVERSUP,

Defendant.

Cause No. CR 19-15-BLG-SPW

ORDER

Defendant Coversup moves the Court to reduce the sentence under 18 U.S.C. § 3582(c)(1)(A). He is currently serving a 70-month sentence for sexual abuse of a minor and abusive sexual contact. *See* Judgment (Doc. 85). His projected release date is July 15, 2025. *See* Inmate Locator, <http://www.bop.gov/inmateloc> (accessed Dec. 20, 2021).

On August 23, 2021, the Court appointed counsel to represent Coversup. *See* Order (Doc. 111). Counsel filed a supplemental motion and the United States submitted a supplemental response.

Coversup's appeal is currently pending before the Ninth Circuit Court of Appeals. *See United States v. Coversup*, No. 20-30266 (9th Cir. filed Dec. 14, 2020). Generally, filing a notice of appeal divests the district court of jurisdiction

over “those aspects of the case involved in the appeal.” *United States v. Najjor*, 255 F.3d 979, 983 (9th Cir. 2001) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). Dismissing motions under 18 U.S.C. § 3582(c)(1)(A) on this basis would effectively compel genuinely ill prisoners, or others whose circumstances are truly extraordinary and compelling as well as urgent, to choose between appeal and release from prison. That is neither wise nor necessary. The Court will proceed under Federal Rule of Criminal Procedure 37(a).

Coversup was tried by a jury in July 2020 and sentenced on December 11, 2020. At that time, COVID-19 was known to pose a serious risk to prison populations. The Court knew Coversup had diabetes, high cholesterol, and might have a high body-mass index. *See* Presentence Report at 3 (photograph); *id.* ¶ 48. The Court knew that diabetes and obesity increased the risk a person will develop severe illness if he contracts COVID-19. *See, e.g.*, Order (Doc. 72) at 3, *United States v. Severson*, No. CR 14-07-BLG-SPW (D. Mont. Dec. 7, 2020) (stating “[d]iabetes and obesity will increase Severson’s risk of developing severe illness if he contracts COVID-19” and citing CDC website).

A few things have changed since Coversup was sentenced. The CDC has revised its assessment of risk factors, but Coversup does not identify new


information pertinent to him. The Ninth Circuit has held that the guideline, U.S.S.G. § 1B1.13, is not binding. *See United States v. Aruda*, 993 F.3d 797, 801–02 (9th Cir. 2021) (per curiam). Most importantly, vaccines and, presumably, boosters are now available to ameliorate the risk of severe illness or death.

None of these factors represents new information favoring a reduction of Coversup's sentence to time served or a reweighing of all the facts and factors the Court carefully considered on December 11, 2020. Similarly, the Court sees no reason to recommend that Coversup be transferred to home confinement.

Accordingly, IT IS ORDERED, pursuant to Federal Rule of Criminal Procedure 37(a)(2):

1. Coversup's motion for compassionate release (Docs. 110, 115) is DENIED.
2. Coversup's motion for a recommendation supporting transfer to home confinement is DENIED. The Court makes no recommendation for or against such transfer.

DATED this 23rd day of December, 2021.


Susan P. Watters
United States District Court